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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re H.S., a Person Coming Under the Juvenile Court
Law.

C079602

SACRAMENTO COUNTY DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

(Super. Ct. No. JD235112)

Plaintiff and Respondent,

v.

R.S.,

Defendant and Appellant.

R.S., father of the minor, appeals from orders of the juvenile court entered at the six-month review hearing continuing the minor in foster care and ordering further reunification services. (Welf. & Inst. Code, §§ 395; 366.21, subd. (e).)¹ Father argues

¹ Further undesignated statutory references are to the Welfare and Institutions Code.

there was insufficient evidence to support the court's finding that returning the minor to parental custody would create a substantial risk of detriment. Disagreeing, we affirm.

FACTS

The Sacramento County Department of Health and Human Services (Department) filed a petition in August 2014 alleging the three-year-old, non-verbal autistic minor, H.S., was at risk of sexual abuse because father molested the minor's nine-year-old half sibling and mother knew or should have known of the abuse and failed to protect the half sibling. When the half sibling first disclosed the abuse to a friend at school (describing oral and anal sex in detail to the friend, then telling the reporting adult that father was "teaching him what to do for when he gets older"), the disclosure was overheard by an adult and reported. Both parents denied any abuse had occurred and insisted the half sibling was lying or coached. The maternal grandmother had suspected the half sibling was being sexually abused because of his actions and statements, but could not prove it. He had acted out sexually and also told her that father "said it's OK to make [father] feel good before he goes to bed." The court ordered the minor detained.

The jurisdiction/disposition report filed in November 2014 stated the parents were in services and continued to deny any abuse had occurred although the half sibling reconfirmed the events. The court sustained the petition, removed the minor from parental custody and ordered reunification services for the parents.

The six-month review report filed in June 2015 recommended further services and out of home placement. Both parents had completed or were near completing the plan requirements. Mother's therapist did not recommend further sessions and reported mother had met the requirements of non-offending counseling. The therapist said mother disclosed that she believed the half sibling was sexually abused, but not by the stepfather. Father's therapist also did not recommend further sessions. The therapist said father was participating in sessions and denied sexual abuse of the half sibling. The therapist told the social worker that "based on the father's personality and participation during sessions,

she did not think the allegations were true.” The therapist’s subsequent report stated that further assessments would be required to determine if father were a sexual predator and that she had “no evidence to suggest he sexually abused his children.” The social worker found it concerning that the therapists supported the parents in their continued denials that the half sibling was sexually abused by father despite the fact that the allegations were sustained by the court. The social worker concluded the parents had failed to benefit from services because they continued to minimize and deny the abuse perpetrated on the half sibling and now were saying that the half sibling misinterpreted the situation. In the social worker’s opinion, mother needed to accept that father did sexually abuse the half sibling and to be willing and able to protect both children from the risk of future abuse. Father needed to be more open about the abuse so he could process his actions and work on relapse prevention.

At the review hearing in June 2015, the evidence was limited to the review report. Father’s counsel argued that father had completed his services; the counselors believed both mother and father had benefitted from counseling but the Department wanted confessions to the petition allegations. Father’s counsel further argued that the question was whether there was sufficient evidence of detriment to the minor’s return and that the record did not support a finding of detriment. The juvenile court adopted the recommended findings and orders, incorporating them by reference in its ruling, and set a review hearing. The court continued the minor in foster care finding that, “the return of the child[] . . . to the physical custody of the parents . . . would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child[].” The finding was based on the further finding that: “Although the parents have participated in services, they continue to minimize and deny the sexual abuse of” the half sibling.

DISCUSSION

Father argues there is insufficient evidence to support the juvenile court's order that returning the minor to parental custody would create a substantial risk of detriment. Father points out that both he and mother completed their reunification plan services and their therapists found they did not need further counseling. Indeed, he asserts, his own therapist was of the opinion there was no evidence he sexually abused his children and, based on his personality and participation, the therapist did not believe the allegations were true. Father contends that the opinion of the social worker was insufficient to support a finding of detriment.

When the sufficiency of the evidence to support a finding or order is challenged on appeal, even where the standard of proof in the trial court is clear and convincing, the reviewing court must determine if there is any substantial evidence--that is, evidence which is reasonable, credible and of solid value--to support the conclusion of the trier of fact. (*In re Angelia P.* (1981) 28 Cal.3d 908, 924; *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.) In making this determination, we recognize that all conflicts are to be resolved in favor of the prevailing party and that issues of fact and credibility are questions for the trier of fact. (*In re Jason L.*, at p. 1214; *In re Steve W.* (1990) 217 Cal.App.3d 10, 16.) The reviewing court may not reweigh the evidence when assessing the sufficiency of the evidence. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

At the six-month review hearing, the court must return the child to the physical custody of his or her parents unless the court finds that returning the child to his or her parents "would create a substantial risk of detriment to the safety, protection or physical or emotional well-being of the child. . . . The failure of the parent . . . to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence the return would be detrimental." (§ 366.21, subd. (e).)

While the parents participated regularly in services, the record does not reflect that either parent made substantive progress in mother's ability to protect the minors or father's relapse prevention. Progress was impeded by the parent's refusal to recognize that father had sexually abused the half sibling. Mother did acknowledge in therapy that the half sibling had been sexually abused (a change from her previous denial of any abuse and accusation that her son was "prone to lie" or "coached by the school"). However, her refusal to accept that father was the perpetrator meant that her ability to protect the minor, H.S., was severely compromised.

Both the mother's and the father's therapists apparently gave greater weight to their client's denials than to court reports or findings after contested hearings. There is no evidence that either therapist ever talked to the half sibling, or even to the other parent. Father's therapist's opinion that the allegations of the petition were not true was based on her beliefs about his personality and his participation in sessions. In light of the half sibling's account of father's abuse, an account corroborated by others, the therapist's opinions--supported only by the parents' denials--were not entitled to much, if any, weight in assessing risk of harm to the children.

Although father relies on the discussion in *Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738 to argue that the therapists' opinions should trump the "unsubstantiated concerns" of the social worker, that case is distinguishable. The court in *Blanca P.* addressed the problem of returning children found to be at risk of sexual abuse when the parents continue to deny that such abuse occurred. The court particularly noted the potential for serious harm when the allegations were unfounded, but had been sustained, and the parents' denials themselves became the basis for termination of services. (*Id.* at pp. 1752-1754.) In *Blanca P.*, a three-year-old child finally identified her father as a perpetrator after having said, in response to continued questioning, that other individuals ("mom" and "boy") had touched her. (*Id.* at p. 1742.) Based on this equivocal evidence, the court sustained a subsequent petition, the original petition having

dealt with domestic violence by mother. (*Id.* at pp. 1742, 1745.) The court ordered a forensic psychologist to study the entire family. (*Id.* at p. 1745.) The study exonerated the father of sexual abuse. (*Id.* at pp. 1741, 1745.) The *Blanca P.* court held that “collateral estoppel effect should not be given, at a . . . review [hearing], to a prior finding of child molestation made at a jurisdictional hearing when the accused parents continue to deny that any molestation ever occurred *and there is new evidence supporting the denial.*” (*Id.* at p. 1757, italics added.)

Here, the half sibling is six years older than the child in *Blanca P.* and was not repeatedly questioned by authorities during which time he named several different abusers, but rather named his father and disclosed the abuse in graphic detail to another child on the playground within the hearing of an adult who reported it. The victim then confirmed the abuse to the reporting adult and later to the social worker. The accusation of abuse was corroborated by the maternal grandmother’s observations, who had also heard the victim refer to his stepfather as the abuser. Further, here there is no new evidence to support the parents’ denials. Although father’s therapist opined from his “personality” that he was not an abuser, this opinion is not the equivalent of a court appointed forensic psychologist ordered to study the entire family and concluding father should be exonerated as occurred in *Blanca P.*

Father also contends that the juvenile court did not state a factual basis for its finding of detriment. As noted above, the court adopted the recommended findings and orders which included a factual basis for the detriment finding. Father did not object to the adequacy of those findings in the juvenile court. The claim is thereby forfeited. (See *In re Dakota S.* (2000) 85 Cal.App.4th 494, 501-502.)

DISPOSITION

The orders of the juvenile court are affirmed.

Duarte, J.

We concur:

Raye, P. J.

Blease, J.